

Trusts – Law 463
Fall Term 2026

LECTURE NOTES NO. 9

VII. RESULTING TRUST

A. THE CONCEPT

In comparison to express trusts that arise exclusively upon the intention of the settlor, *resulting trusts* and *constructive trusts* 'arise by operation of law'. They are not private trusts but rather legal responses to some precipitating event or state of affairs; they are *reactive*, although there may not necessarily be any form of wrongdoing involved.

Resulting trusts are not disassociated from intention altogether – we may look to the intention of the settlor in dispossessing himself or herself although that intention may be presumed, rebuttably or irrebuttably.

Constructive trusts are much different and are imposed without reference to the parties' intentions; indeed, they are imposed against the wishes of the settlor (now trustee).

According to the orthodox classification there are two main categories of resulting trust based upon either the *presumed intent* of the settlor (which may be rebutted, for example in the case of a gratuitous transfer that is properly a gift) or that arise *automatically* in response to certain types of events (e.g. where an express trust fails because not all proprietary interests are accounted for in the settlement, or, where the trust is voided for illegality).

In **Re Vandervell's Trusts (No. 2) [1974] Ch. 269; cb, p.577**, Megarry J described the orthodox view of the two types of resulting trusts:

(a) **The first class of case is where the transfer to B is not made on any trust ... there is a rebuttable presumption that B holds on resulting trust for A.** The question is not one of the automatic consequences of a dispositive failure by A, but one of presumption: the property has been carried to B, and **from the absence of consideration and any presumption of advancement B is presumed not only to hold the entire interest on trust, but also to hold the beneficial interest for A absolutely.** The presumption thus establishes both that B is to take on trust and also what that trust is. **Such resulting trusts may be called "presumed resulting trusts".**

(b) The second class of case is where the **transfer to B is made on trusts which leave some or all of the beneficial interest undisposed of. Here B automatically holds on resulting trust for A to the extent that the beneficial interest has not been carried to him or others.** The resulting trust here does not depend on any intentions or presumptions, but is the automatic consequence of A's failure to dispose of what is vested in him. Since ex hypothesi the transfer is on trust, the resulting trust does not establish the trust but merely carries back

to A the beneficial interest that has not been disposed of. **Such resulting trusts may be called "automatic resulting trusts".**

Megarry J. was reversed in the Court of Appeal on a formalities point, but no doubt was cast on this analysis, which had long been thought to be definitive.

Lord Browne-Wilkinson's later classification in ***Westdeutsche v Islington BC* [1996] 2 All ER 961; cb, p.582** is similar, but not identical, to Megarry J.'s:

(A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a presumption, which presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer: see Underhill and Hayton, *Laws of Trusts and Trustees*, 15th ed., pp. 317 et seq.; *Vandervell v IRC* [1967] 2 AC 291, 312 et seq.; *In re Vandervell's Trusts (No. 2)* [1974] Ch. 269, [1974] 3 All ER 205, at page 288 et seq. of the former report.

(B) Where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial interest: *ibid.* and *Quistclose Investments Ltd. v Rolls Razor Ltd (In Liquidation)* [1970] AC 567, [1968] 3 All ER 651. Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention.

Megarry J in *In re Vandervell's Trusts (No.2)* suggests that a resulting trust of type (B) does not depend on intention but operates automatically. I am not convinced that this is right. If the settlor has expressly, or by necessary implication, abandoned any beneficial interest in the trust property, there is in my view no resulting trust: the undisposed-of equitable interest vests in the Crown as bona vacantia: see *In re West Sussex Constabulary's Widows, Children and Benevolent 1930 Fund Trusts* [1971] Ch. 1, [1970] 1 All ER 544.

The distinction between the traditional classification and this new one is in respect of the role of intention in giving rise to a resulting trust. Thus, whereas the orthodox classification would not use intention at all in certain circumstances (the 'automatic' resulting trust that arises where all beneficial interests are not completely disposed of in a transaction for example), Lord Browne-Wilkinson's formulation looks to intention to rationalise the trust (all trusts are presumed resulting trusts).

Hodgson v Marks **[1971] Ch 892 (CA); cb, p.578**

Here the widow Hodgson transferred her house to her lodger who sold it to Marks (and who mortgaged it in favour of a third party financial institution). The dynamics between the parties are readily apparent from the trial judge's description of the lodger: he 'was a

very ingratiating person, tall, smart, pleasant, self-assured, 50 years of age, apparently dignified by greying hair and giving the impression to one of the defendants' witnesses of a retired colonel.' The widow thought that her nephew would put the lodger out on her death and so she intended to, in essence, leave him a life interest - but of doing so, she merely transferred title and assumed a trust limiting the lodger's interest was effective (which it wasn't, for lack of formalities). At trial, the judge allowed an oral trust to be proved. On appeal, it was held that a resulting trust arose. The further transfer to the innocent party Marks was ineffective as the lodger had no beneficial interest to sell (*nemo dat quod non habet*, 'no one can give what he does not have').

The judgement seems wrong. The widow *did* intend to benefit the lodger (but not to the extent he claimed) and *did* intend for title to vest in him. The trust is really more consistent with a constructive than a resulting trust: that is, the lodger acted deceitfully.